

COUNTY OF KAUAI

Minutes of Meeting
OPEN SESSION

Approved as amended 10/20/17

Board/Committee:		BOARD OF ETHICS		Meeting Date		July 21, 2017		
Location		Mo'ikeha Building, Liquor Conference Room 3			Start of Meeting: 1:00 p.m.		End of Meeting: 1:51 p.m.	
Present		Chair Mary Tudela; Vice Chair Michael Curtis. Members: Susan Burriss; Mia Shiraishi Staff: Deputy County Attorney Nicholas Courson; Boards & Commissions Office Staff: Administrative Specialist Lani Agoot; Administrator Paula M. Morikami						
Excused		Ryan de la Pena, Maureen Tabura, Calvin Murashige						
Absent								
SUBJECT		DISCUSSION				ACTION		
Call To Order						Chair Tudela called the meeting to order at 1:00 p.m. with 4 members present.		
Approval of Minutes		<u>Regular Open Session Minutes of June 16, 2017</u>				Mr. Curtis moved to approve the minutes as circulated. Ms. Shiraishi seconded the motion. Motion carried with 4:0.		
Communication		<u>BOE 2017-12 Possible Conflict of Interest dated June 21, 2017 from JoAnn A. Yukimura relating to ES-907, a briefing on the Notice to Appeal of Sunshine Law Complaint (S Appeal 17-11)</u> <u>BOE 2017-13 Possible Conflict of Interest dated June 9, 2017 from Arryl Kaneshiro relating to C 2017-143, a Water System Use Agreement between Grove Farm Company, Inc., and the County of Kauai for the Adolescent Treatment and Healing Center</u>				Ms. Burriss moved to receive BOE 2017-12. Ms. Shiraishi seconded the motion. Motion carried 4:0. Mr. Curtis moved to receive BOE 2017-13. Ms. Burriss seconded the motion. Motion carried 4:0.		
Business		<u>BOE 2017-14 Meeting Date Change: August 18, 2017, Statehood Day/Holiday</u> Chair Tudela asked the Board if they preferred August 11th or the 25th. Deputy County Attorney Courson shared that he, along with much of his						

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	<p>office, will be on Maui for the Municipal Attorneys Conference the week of the 25th however there would be legal counsel available to attend the meeting. Mr. Curtis shared that he will not be available on August 11th. After further discussion, the Board agreed to schedule their next meeting on August 25, 2017.</p> <p>Chair Tudela shared that she attended the Boards and Commissions' Orientation Training and wanted to share some key highlights with the Board. She said as a reminder, any time three or more board members are involved in any kind of dialogue, i.e. face to face, email, or telephone, the law applies which means discussions regarding board business have to be in public and recorded.</p> <p>Mr. Courson advised that because the discussion was not an agenda item, there needed to be a motion to amend the agenda to include the discussion. He clarified that the Board could amend their agenda during a meeting provided that the added item was not likely to impact the public, which this discussion would not.</p> <p>Mr. Curtis said that normally the agenda is approved before the meeting and if there are any items, unsubstantial items as suggest by Counsel, you add them at that time and approve the agenda as amended. Mr. Courson said that would be the better practice however, the Board was not prohibited from adding an item during the meeting.</p> <p>Chair Tudela shared that at the training, County Attorney Trask advised that board and commission members should refrain from discussing board business through written means at all times and at no time should members</p>	<p>Ms. Burriss moved to amend the agenda to include a brief summary of the training that Chair Tudela attended. Ms. Shiraishi seconded the motion.</p> <p>Motion carried 4:0.</p>

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	<p>ever discuss votes separate from the meeting. Chair Tudela then shared pointers from Ms. Morikami that included:</p> <ul style="list-style-type: none"> • Members should always be recognized by the Chair before speaking for clarity of the record • If the secretary is not present the meeting cannot begin because the meeting must be recorded • When making sidebar comments, turn off your microphone • Any member can call for the question if the discussion becomes lengthy and points are being reiterated • If there is a difference on income on a Disclosure Statement, the Disclosure Statement needs to be updated within 30 days 	
Request for Advisory Opinion	<p><u>RAO 17-009 Request dated July 5, 2017 from Arthur Brun, Councilmember, requesting a written advisory opinion regarding the Disclosure Statement</u></p> <p>Chair Tudela asked for a motion and a second to begin the discussion.</p> <p>Chair Tudela asked for clarification as to whether she felt there was a conflict or not to which Ms. Burriss replied that it wasn't a conflict but it was related to disclosure rules.</p> <p>Mr. Shiraishi disclosed that her law firm has done work for Arthur and his family in the past, however didn't feel it was necessary to recuse herself.</p> <p>Mr. Courson clarified that a motion was needed that either life insurance proceeds are income and therefore need to be disclosed, or are not income and therefore do not need to be disclosed.</p>	<p>Ms. Burriss moved to begin the discussion.</p> <p>Ms. Burriss withdrew her motion. Mr. Curtis moved to receive Arthur Brun's letter of July 5, 2017 and find that there is no conflict</p>

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	<p>Ms. Shiraishi shared that she had an issue with the form in which the motion was presented because she felt it was not a conflict but about income that needed to be disclosed. Chair Tudela asked her if she was saying that there was no conflict to which Ms. Shiraishi said no.</p> <p>Mr. Courson clarified that Councilmember Brun requested a written advisory opinion as to whether he would need to submit an amended disclosure statement after receiving life insurance proceeds. He advised that the clearest way to frame the motion would be either yes, he needs to submit a disclosure statement, or no he does not.</p> <p>Mr. Curtis suggested that the Board determine that income is income even if it is proceeds from an insurance policy.</p> <p>Ms. Burriss shared that it was possible his disclosure statement already covers receipt of any kind of income, taxable or not. However, if his disclosure statement did not list the particular insurance company as a source of income, then the answer would be yes, he would have to amend his disclosure statement.</p> <p>Chair Tudela asked Mr. Courson if the motion was approved as stated, would it set precedence for other types of income to which Mr. Courson replied that it would set a precedence in the future regarding disclosure of life insurance income. He said in regards to any other income he would have to defer to the Board. He cautioned that if the Board were to act like a</p>	<p>of interest. Ms. Shiraishi seconded the motion.</p> <p>Mr. Curtis withdrew his motion. Ms. Shiraishi withdrew her second.</p> <p>Mr. Curtis moved that Arthur Brun should amend his disclosure statement.</p> <p>Ms. Burriss seconded the motion.</p>

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	<p>court, he would discourage them from reaching questions that have not yet been presented to the Board.</p> <p>Ms. Burriss asked if the motion could be worded so that Mr. Brun would need to amend his disclosure if the life insurance company was not listed on his current disclosure statement to which Mr. Courson replied yes. Mr. Courson clarified that his understanding was that Mr. Brun recently received life insurance proceeds issued in two separate payments as a beneficiary due to the death of an insured person. He said it was very unlikely that that would ever be on a disclosure form because someone's death could not be anticipated. Ms. Burriss explained that he might have the same insurance company listed, independent of this particular matter. Mr. Courson asked Ms. Burriss if someone was receiving a pension from a life insurance company and their spouse passed away and that person received the proceeds, was she suggesting that person would not need to disclose that because they were already getting income from that particular insurance company to which Ms. Burriss replied yes. Mr. Courson said that would be the Board's decision but it seemed like a pretty nuanced read and he would have a hard time with that because it would be an additional source of income, irrespective of the source. He said the fact that the source was the same doesn't change the fact that it is still a different type of income because one was a pension and one was life insurance proceeds. Ms. Burriss explained that in terms of expediency and other issues like whether the deceased was a family member, there would be no requirement to report the proceeds and it would not be taxable income.</p> <p>Ms. Shiraishi said the Charter required that all sources and amounts of income are listed and questioned what would constitute income. She added that life insurance proceeds are not considered <u>taxable</u> income. Ms. Burriss commented that it is still income coming in. Ms. Shiraishi questioned if</p>	

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	<p>that pertained to gifts as well and where is the line drawn to which Ms. Burriss said she felt gifts would have to be disclosed.</p> <p>Chair Tudela said she agreed with all that was said and if Mr. Brun were in attendance the Board could get clarification regarding how the money came in and then discuss the definition of income. Mr. Curtis said that those questions would arise once the Board receives his updated form reporting his income. Chair Tudela clarified that she would use the answers to the questions to make a decision as to whether or not it was income and should go on his disclosure statement because income is something that is generally repeated, usually for work or from an investment. She said her question would be was the insurance policy an investment or who was the owner of the insurance policy because, to her, income is not insurance beneficiary payouts if you are not the owner of the policy. She said in regards to the disclosure statement, the Board looks for a conflict in terms of its decision making with the county and if there was going to be a future relationship. If the answer is no, then she wouldn't have Mr. Brun submit an amendment to his disclosure statement. She suggested the Board be conservative in their decision making given the unanswered questions and approve the amendment to Mr. Brun's disclosure statement. Mr. Curtis added that gifts should be reported, as well as new sources of income. Chair Tudela clarified that insurance income is what the Board will vote on and gift income was not included. Mr. Curtis said the question before the Board was whether Mr. Brun had to update his disclosure statement and the answer is yes. Ms. Burriss added that if Mr. Brun wanted a reason, it's because the Board needed more information. Chair Tudela reminded the Board that the rationale behind the decision was something the Board agreed needed to be included in the response. Mr. Curtis commented that it was new income. Ms. Burriss said there was another scenario whereby insurance policies can be business related which may change ownership in a business that the</p>	

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	<p>Board was unaware of.</p> <p>Ms. Shiraishi felt that the discussion was becoming nuanced and it was as straight forward in that somebody passed away unexpectedly and Mr. Brun received two lump sum payments. She said in her opinion, if the Board was extending this to any gift, then it seemed like a very onerous requirement for everyone.</p> <p>Mr. Curtis commented that requiring disclosure statements from all public volunteers and officials was onerous from the beginning.</p> <p>Ms. Burriss stated that if Mr. Brun had said his mother died and he received life insurance proceeds, it would be easy to answer.</p> <p>Chair Tudela said she agreed with all that had been said and would support the motion with the understanding that anyone who comes to the Board in the future with insurance proceeds would be required to update their disclosure statement. She went on to say that if, in the future, the Board feels the decision was onerous once they receive further information, they can change the decision at a later date.</p> <p>Ms. Shiraishi said the Board does not have a proper definition of income and she would have to defer to what is taxable income. Ms. Burriss said the rules for the disclosure don't define income as taxable or not. Mr. Courson said that he was not aware of a definition of income in the County Code or the County Charter. He added that he has been with the Board for four years and periodically the question of gifts has come up. They have never been held to be income and were not on the current disclosure statement. The Charter addresses gifts insofar as if a gift is intended to influence someone, they can't take it, and if a gift is intended to reward someone, they</p>	

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	<p>can't take it. He said it was not otherwise required to disclose gifts. Mr. Courson shared that the Ohio Ethics Commission has a question on their website regarding the death of a relative and whether the insurance proceeds were considered income and if so, should the deceased policy holder or the insurance company be listed on the disclosure. The answer was, <i>"If you receive the proceeds of a life insurance policy and their gross income as defined by the Internal Revenue Code, you must disclose the source of the income on your FDS. For guidance on this question, you may wish to contact the IRS or a tax professional."</i> Mr. Courson said he wasn't sure whether life insurance proceeds were considered income and checked the IRS website that had the question, <i>"Do I report proceeds paid under a life insurance contract as taxable income?"</i> The answer was <i>"Generally, life insurance proceeds are received as a beneficiary due to the death of the insured person aren't includable under gross income and you don't have to report them. However, any interest you receive is taxable and you should report it as an interest received."</i> He shared that the Louisiana Board of Ethics disclosure statement has a definition of income for an individual and it means <i>taxable income</i> and <i>"shall not include any income received pursuant to a life insurance policy."</i> The Alabama Ethics Commission has a complicated disclosure compared to the County's with a finance/insurance section where they list all companies and require disclosure of life insurance companies. Mr. Courson said it can be done either way however he encouraged the Board to be consistent and simple.</p> <p>Chair Tudela said the reason for understanding the relationship between the insurer and the insured was because the Board looks for conflicts of interest when reviewing disclosure statements so the question was, will there be any county business that would be in conflict with that relationship. Other than the policy relationship, will there be an ongoing relationship with that particular company and if the answer is no, then she would not suggest that</p>	

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	<p>the disclosure statement be amended. Chair Tudela called for the question.</p> <p>Mr. Courson clarified that if the Board can't render an advisory opinion within forty-five days, the behavior is deemed acceptable and the Board can either live with that or re-agenda the item when there is a full membership to try and come to a decision. He said he will cite 20.05(D)(2) which says, <i>"It is the function of the Board to render advisory opinions or interpretations with respect to application of the code on request. All requests for advisory opinions shall be answered within forty-five days of its filing and failure to submit an advisory opinion within said forty-five days shall be deemed a finding of no breach of the code."</i></p> <p>Chair Tudela asked for clarification regarding the next step to which Mr. Courson advised Chair Tudela to send Mr. Brun a letter stating that the Board couldn't come to a consensus on the matter and so pursuant to 20.05(D)(2), there has been a finding of no breach of the code which will stand until the opinion is amended or revoked by the Board.</p> <p>Chair Tudela asked if the item could be put back on the agenda when all seven members are present to which Mr. Courson replied yes. She said with the Board's approval, she would put the item on the next full member agenda. Mr. Curtis disagreed stating that the motion was that Mr. Brun file an amended disclosure and the motion failed. He said he would need to see a request for some other action in writing from somebody to put it on the agenda and that in the past the Board has discussed that actions require a written request to go on the agenda. Mr. Courson clarified that in general the Chair controls the agenda however he was not sure whether the Chair could initiate an action and would research the question. Mr. Curtis clarified that the Board's motion to require an amended disclosure failed and that it was obvious that some of the Board's definitions were insufficient.</p>	<p>Motion failed 3:1.</p>

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	<p>He added that Counsel found more appropriate definitions and suggested that perhaps the Board should update their controlling documents to include the definition of income.</p> <p>Chair Tudela said her thinking in bringing the item back to the agenda was not about overturning the decision of the Board but for possibly revising the disclosure statement or the Board's rules and regulations. Mr. Courson said, in his opinion, the Board could interpret what income means and therefore change the disclosure, amend its rules to define the disclosure, request that Council amend the County Code to define income, or request a Charter amendment either by the Charter Commission or the County Council.</p> <p>Mr. Curtis said he didn't think the Board could reconsider their decision unless there was a request by someone to do so. Chair Tudela said the request to put it back on the agenda was for discussion purposes and that all the nuances and confusion needed to be clarified aside from the matter of Mr. Brun's request.</p> <p>Mr. Courson disagreed and explained that there was language that states "<i>Until said opinion is amended or revoked by the Board.</i>" He said the Charter explicitly considers the notion that the Board might revoke a <i>specific</i> opinion. Mr. Curtis questioned who would initiate putting it on the agenda to which Mr. Courson said he was not sure whether the Chair alone could but was confident that the Board as a whole could decide the decision was wrong and put it back on the agenda. He explained that the Chair controls the agenda so once the decision was made to put the item back on the agenda, it would be left to the Chair to schedule the item. He added that until that time, the prior opinion stands and the fact that the Board failed to render an opinion it was, in a sense, deemed rendered. Mr. Courson said he would not issue a formal advisory opinion however the letter from the Chair</p>	

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	<p>to Mr. Brun should include what happened, as well as inform Mr. Brun that the decision may change in the future regardless of whether he brings it up again or someone complains about it.</p> <p>Chair Tudela agreed that the definition of income was something the Board needed to clarify because the foundation of the Board's role was to look at income sources and whether or not there was a conflict. Mr. Curtis commented that the definition from Louisiana was very clear to which Mr. Courson agreed that it specifies <i>taxable income</i>. Chair Tudela said she would make sure the item got on the agenda as a discussion point about defining income, not about resurrecting the Brun decision.</p>	
Executive Session	<u>ES-005 Executive Session Minutes of June 16, 2017</u>	Ms. Shiraishi moved to approve the minutes as circulated. Mr. Curtis seconded the motion. Motion carried 4:0.
Disclosures	<ol style="list-style-type: none"> 1. <u>Shaylyn K. Kimura - Open Space Commission</u> 2. <u>Arthur K. Brun - County Council</u> 3. <u>Derek S. K. Kawakami - County Council</u> 4. <u>Paula M. Morikami - Administrator, Boards and Commissions</u> 5. <u>Christopher A. White - Board of Review</u> 6. <u>Ricky R. Watanabe - Charter Review Commission</u> 7. <u>Jan W. Tenbruggencate - Charter Review Commission</u> 8. <u>Gerald K. Ida - Kauai Historic Preservation Review Commission</u> 	Ms. Burriss moved to receive disclosures 1 through 8 and deem them complete. Ms. Shiraishi seconded the motion. Motion carried 4:0.
Announcements	Next Meeting: Friday, August 25, 2017 – 1:00 p.m., Mo'ikeha Building, Liquor Conference Room	

SUBJECT	DISCUSSION	ACTION
Adjournment		Mr. Curtis moved to adjourn the meeting at 1:51 p.m. Ms. Shiraishi seconded the motion. Motion carried 4:0.

Submitted by: _____
Lani Agoot, Administrative Specialist

Reviewed and Approved by: _____
Mary Tudela, Chair

() Approved as circulated.

() Approved with amendments. See minutes of _____ meeting.